

Message Text

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ACTION SS-30

INFO OCT-01 ISO-00 SSO-00 NSCE-00 /031 W

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FM AMEMBASSY SAN JOSEH

TO SECSTATE WASHDC IMMEDIATE 5453

C O N F I D E N T I A L SECTION 1 OF 2 SAN JOSE 3902

EXDIS

E.O. 11652: GDS

TAGS: PFOR, PGOV, CS

SUBJECT: VESCO EXTRADITION

REF: A) STATE 216224 AND B) SAN JOSE 3901

1. IT APPEARS TO US THAT CASE DESCRIBED REFTEL A WOULD BE EXTRADITABLE PROVIDING EVIDENCE MAKES CLEAR THAT FRAUD WAS ACTUALLY CONSUMMATED, THAT THE USE OF THE CABLES WAS ONLY A DEVICE TO CONSUMMATE THE FRAUD AND NOT THE CRIME ITSELF, AND THAT VESCO WAS IN AND SUBJECT TO THE JURISDICTION OF THE US AT THE TIME. THAT THE NORMATIVE CRIME IS THE "USE OF CABLES TO COMMIT FRAUD" WILL CONTINUE TO PRESENT SOME PROBLEM, AND BE THE MAIN ARGUMENT OF THE DEFENDANTS; IT WAS ONE OF THE REASONS FOR THE LOWER COURT RULING AGAINST US LAST TIME. HOWEVER, THE APPEALS COURT EXPLICITLY RULED THAT FRAUD COMMITTED BY WIRE OR BY ANY OTHER MEANS WAS COVERED BY THE TREATY, AND IT THEREFORE SEEMS TO US THAT THERE IS CLEAR LEGAL PRECEDENT FOR ACCEPTING CRIMES CHARGEABLE UNDER 18 USC 1343 AS EXTRADITABLE. (SEE REFTEL B WHICH SUMMARIZES KEY POINTS IN PREVIOUS COURT DECISIONS, INCLUDING PERTINENT QUOTES.)

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2. NEVERTHELESS, THERE ARE OTHER SUBTLETIES WHICH SUGGEST DIFFICULT PROBLEMS IN EXPLAINING THE CASE TO COSTA RICAN JUDGES. FOR EXAMPLE, WE ASSUME THE "AID AND ABETTING" CHARGE IS

INCLUDED SINCE VESCO DID NOT SEND THE INCRIMINATING CABLE HIMSELF. THIS SUGGESTS ALL KINDS OF COMPLICATIONS (AND DEFENSES) IN ARGUING THE CASE HERE, SINCE THE JURIDICAL CONCEPTS OF "AIDING AND ABETTING" MAY BE HARD TO COMPREHEND OR EXPLAIN HERE. THIS AREA WORRIES US, AND WE NEED EXPERT COUNSEL TO DETERMINE HOW IT FITS IN COSTA RICAN JURISPRUDENCE AND HOW IT MUST BE PRESENTED.

3. OTHER PROBLEMS WE SEE ARE AS FOLLOWS:

A) OUR PAST EXPERIENCE SHOWS WE CANNOT EVEN BEGIN A PROCESS WITHOUT PRESENTING CERTIFIED COPIES OF THE INDICTMENT, ARREST ORDER, AND THE EVIDENCE WHICH FORMED THE BASIS FOR THE CHARGE (LAST PARAGRAPH ARTICLE XI OF THE TREATY) TOGETHER WITH THE TRANSLATIONS. WE CAN BE THROWN OUT OF COURT ON THE TECHNICALITY OF NOT PROVIDING TRANSLATIONS.

B) WE HAVE NO HOPE OF GETTING A PROVISIONAL ARREST ORDER ON THE BASIS OF MY SWORN STATEMENT ALONE. THAT WAS THROWN OUT LAST TIME AND IT WILL BE AGAIN. THE NATURE OF THE CRIME IS SO HARD TO COMPREHEND IN LOCAL JURISPRUDENCE THAT THE JUDGE WILL AGAIN REQUIRE ALL EVIDENCE TO DETERMINE IF A PRIMA FACIE EXTRADITABLE CRIME EXISTS AT ALL; HE WILL NOT ORDER A PROVISIONAL ARREST (ESPECIALLY OF VESCO) IF HE HAS ANY DOUBTS.

C) COSTA RICAN PROCEDURE REQUIRES DOCUMENTS STATING WHAT PUNISHMENT IS PRESCRIBED FOR THE CRIMES FOR WHICH HE IS CHARGED AND WHAT THE STATUTE OF LIMITATIONS IS. (THIS SUGGESTS SOME COMPLICATIONS IN EXPLAINING "AIDING AND ABETTING" PROVISION.)
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4. I WANT TO STRESS THAT I CANNOT GIVE THE DEPARTMENT AN OPINION ON THE LEGAL MERITS OF THE CASE OR AN ESTIMATE OF OUR CHANCES WITH ANY REAL CONFIDENCE WITHOUT CONSULTING LOCAL COUNSEL. THE PROCESS HERE IS SO IMMERSSED IN COSTA RICAN JURISPRUDENCE AND INTERPRETATION THAT SUCCESS DEPENDS ON ALL KINDS OF COMPLEX NUANCES; I THEREFORE DO NOT WANT TO MAKE A DEFINITIVE RECOMMENDATION, AND THE DEPARTMENT SHOULD NOT DECIDE, WHETHER OR NOT TO PROCEED WITH ANOTHER EXTRADITION REQUEST WITHOUT HAVING COMPETENT LOCAL COUNSEL FIRST REVIEW THE EVIDENCE AND GIVE US AN OPINION.

SECONDLY, IF COUNSEL RECOMMENDS WE GO AHEAD AND THE DEPARTMENT DECIDES TO DO SO, WE ABSOLUTELY NEED TO RETAIN COUNSEL TO REPRESENT US. THE PROVISIONS OF ARTICLE 13 OF THE TREATY ARE NO PARTICULAR HELP TO US. HALF THE GOCR, AND CERTAINLY THE PRESIDENT AND THE FOREIGN MINISTER, ARE INTERESTED PARTIES; THE ATTORNEYS OF THE SOLICITOR'S OFFICE ARE NOT PARTICULARLY COMPETENT AND IN ANY CASE ARE NOT FREE AGENTS. WE WOULD GET VERY LITTLE EXPERT AND RELIABLE ADVICE. IT IS NOT THAT THE GOCR WOULD TRY TO IMPEDE US OR INFLUENCE THE INDEPENDENT JUDICIARY AS THAT THEY WOULD JUST NOT HELP OR POINT OUT ALL THE PITFALLS. VESCO'S LAWYERS WOULD BE KEPT FULLY INFORMED. SIMILARLY, IT SHOULD BE UNDERSTOOD THAT VESCO HAS HIGH-PRICED ABLE LAWYERS. IF THEY CANNOT ARGUE SUBSTANCE THEY WILL USE TECHNICALITIES, OF WHICH THERE ARE MANY IN COSTA RICAN LAW, AND CASES CAN LEGITIMATELY BE THROWN OUT ON TECHNICALITIES WITHOUT HAVING TO REVIEW THE MERITS, AS CO FOUND LAST TIME. THE COURTS WOULD BE MORE THAN HAPPY TO TAKE REFUGE IN SUCH TECHNICALITIES IF THEY CAN AVOID HAVING TO RULE SUBSTANTIVELY ON THIS POLITICALLY EXPLOSIVE CASE. IT IS IN THIS WHOLE AREA THAT WE WOULD BE VULNERABLE WIHOUT LOCAL COUNSEL--WE DO NOT KNOW WHERE ALL THE CONFIDENTIAL

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TRIP WIRES ARE.

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C O N F I D E N T I A L SECTION 2 OF 2 SAN JOSE 3902

EXDIS

5. I MUST ALSO STRESS THAT WE STILL SUFFER FROM A CREDIBILITY PROBLEM, SPRINGING OUT OF THE LAST CASE, AS ARA/CEN KNOWS FULL WELL; COSTA RICANS

DO NOT BELIEVE WE REALLY WANTED TO EXTRADITE VESCO. WE CANNOT AFFORD TO STUB OUR TOE ON TECHNICALITIES OR DIFFICULT LEGAL CONCEPTS AGAIN SINCE THIS WOULD HURT US ACROSS-THE-BOARD IN OUR RELATIONSHIPS AND DEALINGS HERE. WE SIMPLY MUST BE AS SURE AS WE CAN THAT WE HAVE A GOOD CASE AND PRECISELY WHAT THE PROBLEMS AND OUR CHANCES ARE LIKELY TO BE BEFORE REPEAT BEFORE WE EVEN BEGIN THE PROCESS. WE CAN ONLY DO THAT WITH GOOD LOCAL COUNSEL.

6. ACTION REQUESTED: I ASK THAT I BE AUTHORIZED TO CONSULT LOCAL COUNSEL LAYING OUT THE CASE FOR HIM AND GET HIS OPINION AND CONCLUSIONS. I DO NOT REPEAT NOT WISH TO RETAIN ODIO AGAIN. I AM NOT SATISFIED WITH HIS PERFORMANCE. I WOULD PROPOSE TO CONSULT FRANCISCO CASTILLO WHO ASSISTED LAST TIME AND WHO IS AN EXCELLENT AUTHORITY. I DO NOT KNOW IF HE WOULD CHARGE FOR CONSULTATION, BUT I CAN FIND OUT. I ALSO WISH TO STRESS THAT IF WE REQUEST EXTRADITION IT MAY WELL BE DESIRABLE TO RETAIN A SECOND COUNSEL WITH CASTILLO WHO CAN PROVIDE THE "BARRISTER" FUNCTION OF DEALING WITH THE JUDGES--- CUSTOMARY AND EVEN NECESSARY PRACTICE HERE--AND I MAY SO RECOMMEND. PLEASE UNDERSTAND THAT IF WE ARE CONFIDENTIAL

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SERIOUS ABOUT TRYING TO EXTRADITE VESCO WE WILL SIMPLY HAVE TO DO IT RIGHT AND BE WILLING TO PAY FOR IT.

7. THIS ALSO UNDERLINES THE IMPORTANCE OF PAYING ODIO AND CASTILLO'S BILL (PARA 8 REFTTEL A) AS SOON AS POSSIBLE. I CAN HARDLY SEEK NEW COUNSEL OR CONSULTATION WITHOUT HAVING PAID OLD BILLS. I ASK THAT PAYMENT BE MADE ASAP.
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